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August 14, 2006

Sam Leto  
Legislative Services Agency  
Fiscal Services Division  
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Local

Re: Senate and House Committees on Government Oversight

Dear Sam:

During my appearance before the Senate and House Committees on Government Oversight on July 18, the Committees asked me to provide them with a copy of the Workforce Investment Act agreement between Iowa Workforce Development and CIETC. I have enclosed a copy of that contract. In addition, the Government Oversight Committees asked me to answer the following questions:

- Are CIETC employees required to be bonded?
- Can the State of Iowa dissolve CIETC?
- Are Iowa Workforce Development employees working for CIETC?

My responses to the Committees' questions are set forth below.

### *Question 1*

Are CIETC employees required to be bonded?

### *Answer*

The Regional Grant Agreement between Iowa Workforce Development and CIETC requires CIETC to procure a fidelity bond for individuals engaged in certain activities. Specifically, section 4.5 of the contract requires CIETC to maintain a fidelity bond for individuals who are involved with financial transactions:

Any individual who is authorized to act on behalf of the Regional Grantee for the purpose of receiving or depositing Agreement funds into Program accounts or issuing financial documents, checks, or other instruments of payment for Program costs must be covered by a fidelity bond. The minimum amount of the bond must be at the least the lower of either one hundred thousand dollars (\$100,000) or the amount of the highest advance on reimbursement received through checks or drawdown during the term of a [sic] Agreement.

Nothing in the Regional Grant Agreement appears to require CIETC to provide any other type of bond.

Moreover, I have not formed any opinion about whether the fidelity bond required by section 4.5 of the Regional Grant Agreement would cover CIETC's misuse of funds. Whether the fidelity bond will cover CIETC's misuse of contract funds depends on the terms of the bond, and I do not have a copy of the bond. For example, the fidelity bond may cover theft or other criminal acts but not misused funds. Also, the bond may not cover the individuals alleged to have misused the funds. Consequently, I have requested copies of any fidelity bonds, as well as any insurance policies that might cover any misuse of funds, from CIETC's attorneys so that I can review them to determine if coverage might exist.

The question of bonding arose in the context of whether the State of Iowa could become liable for CIETC's misuse of funds. As I testified, I doubt that could happen because the Workforce Investment Act (WIA or the Act) imposes what amounts to strict liability on the local elected officials for any misuse of federal funds.

Reflecting an express commitment to local control, the Act and its implementing regulations impose liability for any misuse of WIA funds on the chief elected officials. Specifically, section 117 of the WIA says,

The chief elected official in a local area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local area under sections 128 and 133, unless the chief elected official reaches an

agreement with the Governor for the Governor to act as the local grant recipient and bear such liability.<sup>1</sup>

The chief elected official remains liable for any misuse of grant funds even when the chief elected official designates another entity to serve as a local grant sub-recipient for grant funds or as a local fiscal agent.<sup>2</sup>

United States Department of Labor (DOL) regulations reiterate that the chief elected official is liable for any misuse of WIA grant funds.<sup>3</sup> If a local workforce area is composed of more than one unit of general local government, "the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials."<sup>4</sup>

When the WIA and the DOL implementing regulations say that chief elected officials are liable for any misused funds, this does not mean that the chief elected officials are personally liable for repaying misused funds. As the preamble to the WIA regulations explains, the DOL interprets section 117

as holding the chief elected officials ... liable in their official capacity and not holding them personally liable for misuse of WIA funds.<sup>5</sup>

This means, as a practical matter, that the local government entities are liable for misuse of WIA funds.

Here, the chief elected officials who are members of CIETC are liable for CIETC's misuse of WIA grant funds. First, the chief elected officials designated CIETC—a 28E entity they created—as the fiscal agent, service provider, and a member of the coordinating service provider.<sup>6</sup> Second, the CIETC 28E Agreement allocates liability for any misuse of funds as required by the DOL regulations:

By approval of this Agreement and the consummation between this Consortium and the Workforce Investment Board of an agreement selecting the grant recipient, the administrative entity, and service provider, each Member

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<sup>1</sup> 29 U.S.C. § 2832(d)(3)(B)(i)(I).

<sup>2</sup> 29 U.S.C. § 2832(d)(3)(B)(i)(II).

<sup>3</sup> 20 CFR § 667.705

<sup>4</sup> 20 CFR § 667.705(c).

<sup>5</sup> Workforce Investment Act Regulations, 65 Fed.Reg. 49294, 49299.

<sup>6</sup> CIETC 28E Agreement §§ 1 & 4.

government appointing representatives to the Consortium shall jointly and separately accept the responsibility and liability for the operation of WIA programs to the extent of the responsibilities assigned or agreed upon between the Consortium and the Workforce Investment Board; and, consistent with and in proportion to the terms of voting representation established in paragraph number 5, except that the counties of Boone, Dallas, Jasper, Madison, Marion, Story, and Warren shall divide liability in proportion to the population of each of such counties bears to the total population of such seven (7) counties; and, consistent with Federal, State and local laws. The responsibility and liability for any other Federal or State education, employment or training program authorized by the Consortium shall be determined in the same manner.<sup>7</sup>

In addition, I want to point out that the CIETC 28E Agreement imposes the same strict liability on Consortium members for misuse of other federal and state funds, such as the *PROMISE JOBS* program. This means that local elected officials are responsible for any misuse of funds under the Regional Grant Agreement.

In summary, the chief elected officials who are members of CIETC are liable for any misspent WIA grant funds as well as any other funds provided under the grant agreement. The fact that CIETC may have insufficient assets to repay any misspent federal funds does not alter the local elected officials' liability.

### *Question 2*

Can the State of Iowa dissolve CIETC?

### *Answer*

The short answer to this question is no. The State of Iowa lacks any authority to dissolve CIETC for two principal reasons.

First, the State of Iowa is not a member of CIETC and therefore lacks any power to dissolve the entity. As the Committees know, the City of Des Moines and the Counties of Boone, Dallas, Jasper, Madison, Story, Polk, and Warren formed CIETC as a

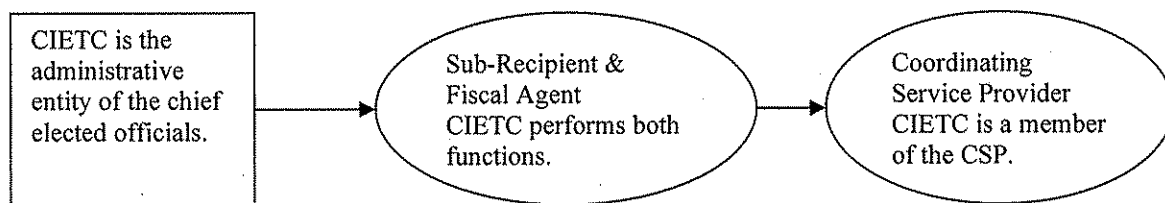
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<sup>7</sup> CIETC 28E Agreement § 8.

governmental entity under chapter 28E of the Iowa Code. Though the CIETC 28E Agreement allows a majority of the members to terminate the agreement, the State of Iowa lacks any authority to invoke the termination provision because it is not a member of CIETC. Put simply, only members of CIETC can vote to terminate CIETC. Nor does chapter 28E generally authorize the State of Iowa to terminate any 28E entity.

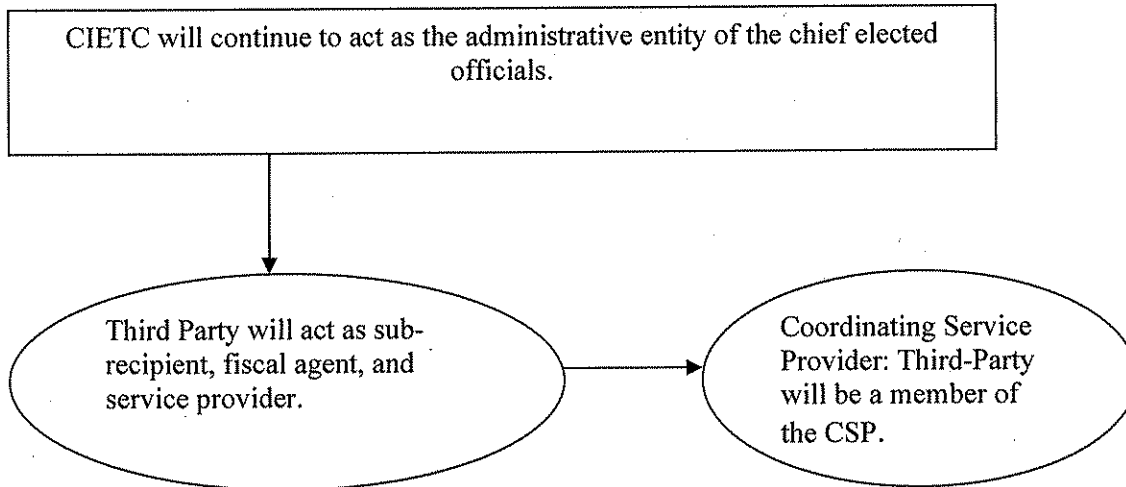
Second, the State of Iowa lacks the authority to terminate CIETC under the Workforce Investment Act. Under the Act, local elected officials or local workforce investment boards, or both, appoint the fiscal agent or grant sub-recipient, the coordinating service provider, and service providers. Here, the local elected officials have designated CIETC as the fiscal agent and grant sub-recipient. CIETC is also a service provider and member of the coordinating service provider. Figure 1 shows this arrangement.

**Figure 1**



Moreover, as the Committees may already know, CIETC's board of directors has recently voted to limit its activities to acting as the administrative entity for the chief elected officials, responding to Iowa Workforce Development Interim Director David Neil's statements that CIETC must change how it operates to help restore the public's trust. In the future, CIETC will no longer act as the fiscal agent, a service provider, or a member of the coordinating service provider. Instead, it will contract with a third party to perform these roles. Figure 2 below shows this new arrangement.

**Figure 2**



While the State of Iowa lacks the authority under the WIA to dissolve CIETC, the Governor does have the limited power to impose sanctions on CIETC for substantial violations of the Act, which could dramatically alter CIETC's structure or existence. Section 183 of the WIA authorizes the Governor to impose sanctions on CIETC if there is a "substantial violation of a specific provision" of the Act and CIETC has failed to take corrective action.<sup>8</sup> Possible sanctions include:

- issuing a notice of intent to revoke approval of all or a part of the local plan affected; or
- imposing a reorganization plan, such as (1) decertifying the local board, (2) prohibiting the use of eligible providers, (3) selecting an alternative entity to administer the program for the local area involved, (4) merging the local area into one or more other local areas, or (5) making such other changes necessary to secure compliance.<sup>9</sup>

As a practical matter, sanctions under section 183 are rare. First, a state can only impose sanctions for "substantial violations" of a specific provision of the WIA. Nothing in the Act or its implementing regulations provides much, if any, guidance on what constitutes a substantial violation of a specific provision of the WIA. I am unsure

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<sup>8</sup> 29 U.S.C. § 2934(b).

<sup>9</sup> 29 U.S.C. § 2934(b).

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whether CIETC seeking unallowable, unallocable, or unreasonable expenses constitutes a substantial violation. Nor am I sure if CIETC's misuse of WIA funds necessarily constitutes a substantial violation. Even assuming that the State can establish a substantial violation, CIETC must also fail to take corrective action before sanctions can be imposed. The State of Iowa is examining whether a substantial violation of a specific provision of the WIA exists and, if so, what corrective action would be appropriate.

### *Question 3*

Are Iowa Workforce Development employees working for CIETC?

### *Answer*

To my knowledge, Iowa Workforce Development does not have any employees working for CIETC. That said, Iowa Workforce Development has concluded that it should not have contracted with CIETC to operate two programs—the New Iowan Center Program and the Navigator Program.

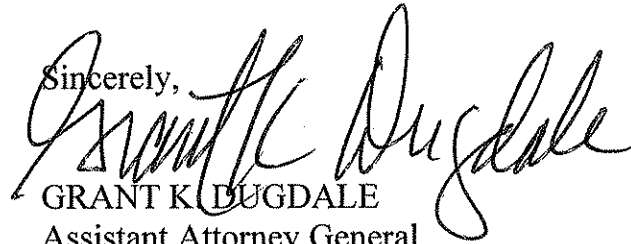
Iowa Workforce Development has concluded that the New Iowa Center program is long-term program and that State of the Iowa employees, not CIETC employees, should perform the work. Thus, it is transitioning those positions from CIETC to Iowa Workforce Development. Toward that goal, Iowa Workforce Development is working with the Department of Administrative Services to classify the positions under the State of Iowa's classification system. After the positions have been appropriately classified, Iowa Workforce Development will fill those positions consistent with applicable law and applicable collective bargaining agreements.

Likewise, Iowa Workforce Development has re-examined the Navigator Program. Unlike the New Iowan Center Program, Iowa Workforce Development has concluded that the Navigator Program is short-term program. Thus, Iowa Workforce Development has, or will in the near future, take over the Navigator Program using temporary employees under the Merit Resources contract.

### *Conclusion*

I hope that I have answered the Committees' questions. If, after reviewing this letter, the Committees have any further questions, please contact me. Thank you.

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Sincerely,  


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